

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Boards of Trustees of Ohio :
Laborers' Fringe Benefit :
Programs, : Case No. 2:10-cv-652

Plaintiffs, : JUDGE EDMUND A. SARGUS, JR.

v. : Magistrate Judge Kemp

Toledo Caisson Corporation, :

Defendant. :

REPORT AND RECOMMENDATION

On October 22, 2010, plaintiffs moved for an order to show cause why defendant Toledo Caisson Corporation and its officer, James Bennett, should not be held in contempt for failure to submit reports and pay fringe benefit contributions for the month of July, August and September, 2010, as required by the Court's order filed September 28, 2010. Defendants were ordered to appear on January 11, 2011 at 1:30 p.m. to show cause why a finding of contempt should not be made. They did not appear at that time.

Subsequent to the hearing, plaintiffs filed a post-hearing memorandum indicating that they had received some payments and that the defendant's non-compliance with the Court's prior order had been partially resolved. As further relief, plaintiffs now ask for a judgment in the amount of the remaining contributions which are owed, plus attorneys' fees.

Although plaintiffs have not formally moved to amend the complaint, their post-hearing memorandum may be treated as a motion to amend to conform to the evidence under Fed.R.Civ.P. 15(b). The evidence attached to the motion indicates that the sum of \$4,454.73 including \$2,764.10 in contributions, \$1,540.37 in liquidated damages and \$150.26 in interest, is owing, and that

the additional attorneys' fees amount to \$1,290.00.

The Court believes it would be appropriate to enter a supplemental judgment for these amounts. However, defendant may wish to take issue with the calculation. Consequently, it is recommended that, unless defendant files an objection within the time set forth in this Report and Recommendation, that plaintiffs' motion for leave to amend be granted and that a supplemental judgment in the total amount of \$5,744.73 be entered against the defendant.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. §636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

/s/ Terence P. Kemp
United States Magistrate Judge